

**Court No. - 67**

**Case :- CRIMINAL MISC ANTICIPATORY BAIL APPLICATION  
U/S 438 CR.P.C. No. - 14131 of 2021**

**Applicant :-** Manas Pachauri

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Sushil Shukla

**Counsel for Opposite Party :-** Jai Shanker Misra, Indra Deo Mishra

**Hon'ble Rahul Chaturvedi, J.**

Heard Shri Sushil Shukla, learned counsel for the applicant; Shri V.P. Srivastava, learned Senior Advocate assisted by Shri Indra Deo Mishra, learned counsel for the complainant and Shri M.C. Chaturvedi, learned Additional Advocate General, assisted by Shri Ghanshyam Kumar, learned A.G.A. for the State.

Shri Manish Mishra, Additional S.P., S/Shri Salim Ahmad and Kiran Pal Singh, I.Os. of the case, are also present in the Court personally, pursuant to the earlier order of this Court. These police officers have also been heard by the Court.

The instant application is being moved by the applicant Manas Pachauri invoking the powers of Section 438 Cr.P.C. that he has got every reason to believe that, he may be arrested on the accusation of having committed a non-bailable offence in connection with Case Crime No.431 of 2020, under Sections 420, 406, 506 I.P.C., Police Station- Baraut, District- Baghpat.

From the record, it is evident that the applicant has approached this Court only after getting his anticipatory bail rejected from the court of learned Additional Session Judge-III, Baghpat vide order dated 14.6.2021.

Shri M.C. Chaturvedi, learned A.A.G., at the outset apprised the Court that pursuant to the order of I.G. Meerut Zone, having Letter No.CA-14(230Z)/2021/2018 dated 8.7.2021, entrusting the further investigation of the case u/s 173(8) Cr.P.C. to Crime Branch

Meerut to have indepth probe into Case Crime No.431 of 2020, P.S.-Baraut, District-Baghat u/s 147, 420, 406, 506 I.P.C., authored by one Praveen Tomar. The I.O. of Crime Branch after conducting the further investigation in a professional way, recording the statements of informant u/s 161 as well as 164 Cr.P.C. before the Magistrate, prepared a closure report in the matter by making the following observation:

“श्रीमान जी मुकदमा उपरोक्त वादी श्री प्रवीन तोमर द्वारा मान० न्याया० में 156(3) CrPC में प्रा० पत्र देकर पंजीकृत कराया गया था वादी द्वारा अपने धारा 161 व 164 Crpc के बयानों में कहा गया कि मेरे द्वारा मुकदमा उपरोक्त पंजीकृत नहीं कराया गया है। और न ही मेरा इस मुकदमें से कोई लेना देना है। मुकदमे का मुख्य अभि० मानस पचौरी भी उस दिन घटना के समय फोर्टिस अस्पताल गुडगाँव में था। मुझ विवेचक व पूर्व विवेचको द्वारा की गई विवेचना से अभी तक अभि० गणों के विरुद्ध कोई साक्ष्य नहीं मिला। अतः विवेचना द्वारा अन्तिम रिपोर्ट समाप्त की जाती है।

श्रीमान जी से निवेदन है। कि अन्तिम रिपोर्ट स्वीकार करने की कृपा की जावे।”

On this when the author Shri Praveen Tomar is himself denying that he has been made tool by certain unknown vested interest, after misusing his relevant documents and he has got no concerned with the instant Case Crime No.431 of 2020, the police have no other option but to give a ‘closure report’. Thus, so far as the interest of the applicant is concerned, he is automatically protected and has got no threat perception to be arrested by the police in connection with present case crime number.

Indeed it is stunning, where the informant of the F.I.R. is on the face, is denying that he has never authored the F.I.R. in question and his relevant documents were misused by some impostor (Lokendra @ Kallu, his own maternal brother) while cooking up a false prosecution case against the applicant, but what is more disturbing is, the said F.I.R. was registered through 156(3) Cr.P.C. application, and ordered by the Court to investigate into the matter by the concerned I.O. The I.O. too blindly without verifying

the root and the author of the F.I.R., concluded the exercise of investigation and have submitted the charge sheet against the applicant. Not only this the learned Magistrate too in most mechanical fashion has taken the cognizance of the offences. This by itself is shocking stage of affair and an example, also an eye-opener for all those concerned, who have not paid any serious heed to the repeated instructions/guidelines of the High Court and Hon'ble Apex Court in this regard (taking cognizance only after application of judicial mind) and has made mess of the entire so-called prosecution.

However, since the matter relates to a deep-rooted conspiracy whereby the State machinery was mobilized by certain person for their joyride and to level the score with the applicant, which needs to be tackled and dealt with iron hand. Any criminal prosecution is not meant for amusement or to level the score with their opponents. To mobilize the police personnel on a sham case is extremely serious issue and no mercy be shown to these person, who gives hoax-call by initiating the proceedings.

Shri Sushil Shukla, learned counsel for the applicant in his pleadings has pointed out regarding the involvement of one Akash Vashishth @ Akash Sharma s/o late Madan Lal Sharma, R/o Village Mangroli, Tehsil-Jewar, District-Gautam Budh Nagar in this regard. In the pleadings of the anticipatory bail application, he has levelled a volley of allegations against the aforesaid person who is playing tricks behind the curtains using one Lokendra @ Kallu S/o late Kailash Upadhyay as his tool. Court is not expressing any opinion either ways in this regard but certainly wishes to have in-depth inquiry into the matter.

A supplementary affidavit has been filed by Shri Sushil Shukla, annexing a F.I.R. No.821 of 2020 at Police Station Baraut,

District Baghpat dated 28.7.2021 u/s 195, 419, 420, 467, 468, 471 I.P.C., which has been lodged by Praveen Kumar against Lokendra @ Kallu, in which he has mentioned that he is resident of Baghpat and the named accused Lokendra @ Kallu is the son of his maternal uncle (*Mama*). On a false pretext of engaging his vehicle in RTO office the named accused has taken the voter I.D. card of Praveen Kumar and thereafter misusing that voter I.D. card the said imposter has lodged a false application u/s 156(3) Cr.P.C. projecting Praveen Tomar as the informant of Case Crime No.431 of 2020, in which Manas Pachauri (the applicant), Gaurav Sharma and Shyam Sharma were made accused. However, in the instant F.I.R. No.821 of 2021 the said Praveen Kumar, the informant clearly mentioned that he does not even know Manas Pachauri, Gaurav Sharma and Shyam Sharma, nor has given any amount for the alleged purpose of procuring any service. Said Lokendra @ Kallu has committed fraud and forgery by pasting his photograph and using his voter I.D. card for lodging an application u/s 156(3) Cr.P.C. requesting therein to lodge an F.I.R. against the applicant and others under suitable sections of the I.P.C., hence, the present F.I.R. Thus, the said Lokendra @ Kallu has misused the process of Court.

Thus, it is explicitly clear that said Praveen Kumar s/o Dharmveer Singh, the alleged author and informant of Case Crime no.431 of 2020 has got no concerned or connection with the text of above case. Praveen Kumar in his statement u/s 164 Cr.P.C. as well as in the F.I.R. registered Case Crime no.821 of 2021 unequivocally and categorically submitted that he has got no grudge or grievance against said Manas Pachauri and others, the named accused persons. In fact, he does not even know these named accused persons. Resultantly, the informant Praveen Kumar,

himself puts a grave question mark on the authenticity and veracity of the prosecution story mentioned in Case Crime no.431 of 2020.

Now coming to the instant investigation of Case Crime No.431 of 2020 is concerned, after lodging of the F.I.R. the concerned I.O. of the case, who seems to be hand in glove with the person behind the curtains for obvious pecuniary gains, and that's why in a hot haste manner has conducted a perfunctory and superficial investigation and hurriedly submitted a charge sheet in the matter in a typical way allegedly recording the statement u/s 161 Cr.P.C. of Praveen Tomar, the alleged informant of the case, in C.D. Parcha No.5 dated 10.9.2019 and the statement of witness Lokendra @ Kallu in C.D. Parcha No.6 dated 20.9.2020. As mentioned above, the entire exercise of investigation was an eye-wash and desk-work by the concerned I.O., who has not even bothered to establish the identify of the informant. Thereafter, the concerned Magistrate too, despite of the repeated deprecation by the High Court, in a most mechanical fashion, has taken the cognizance of those offences against the chargesheeted accused namely Manas Pachauri and others. Said report u/s 173(2) Cr.P.C. was submitted by the concerned I.O. on 28.9.2020, in which the I.O. has clearly indicated that during investigation he has collected sufficient material against Manas Pachauri, Gaurav Sharma and Shyam Sharma attracting the Sections 420, 406, 506 I.P.C.

After the alleged charge sheet was submitted and the concerned Magistrate has taken the cognizance of those offences, the applicant Manas Pachauri approached the I.G., Meerut Zone, Meerut, who after giving a patience hearing, put the erstwhile I.O. Dharendra Kumar under suspension and entrusted the matter to Shri Salim Ahmad, Crime Branch, Baghpat to conduct further investigation u/s 173(8) Cr.P.C. and consequently S.P., Baghpat

vide order dated 14.7.2021 transmitted the matter for further investigation. Shri Salim Ahmad, I.O. caught hold of the informant Praveen Tomar (real one) and produced before the Magistrate for recording her statement u/s 164 Cr.P.C., in which he states :

“करीब एक वर्ष पूर्व मेरे मामा का लड़का ने मुझे बोला कि मैं तेरी गाड़ी R.T.O. Office में लगवा दूंगा, मुझे तेरा पहचान पत्र दे दे। मैंने मेरी पत्नी के फोन से पहचान पत्र की फोटो Whats app के माध्यम से लोकेन्द्र को फोटो भेज दी। उसने कोई गाड़ी नहीं लगवाई। करीब चार दिन पहले (24.07.2021) को मुझे इंस्पेक्टर साहब ने बताया कि मुकदमा दर्ज किया गया है, व सम्बन्धित दस्तावेज भी दिखाये। प्रा० पत्र पर फोटो लोकेन्द्र उर्फ कल्लू की थी। उस पर हस्ताक्षर भी मेरे नहीं हैं। मैंने कोई मुकदमा दर्ज नहीं कराया है। मैं न ही अभियुक्तों को जानता हूँ। मुझे इस मुकदमें से कोई लेना नहीं है। यही मेरा बयान है। sd हस्ताक्षर वादी।

उक्त बयान मेरे द्वारा वादी के बोलने पर लिखा गया है। जिसको पढ़कर सुनाने पर बयान वादी ने तस्दीक किया। sd अंग्रेजी वरुण कौशिक J.M. बागपत 27.7.21।”

Consequently, on 30.9.2021 the Investigating Officer has submitted closure report in the matter. It would not be out of place to mention here, that further investigation was conducted by the crime branch, only after seeking due permission and taking the concerned Magistrate into confidence, as contemplated in the judgement of Hon’ble Apex Court in ***Vinay Tyagi vs Irshad Ali @ Deepak and others, (2013) 5 SCC 762.***

A million dollar question is that when the fraud is being played with the system and the informant of the F.I.R. is denying that he has never lodged any F.I.R., then the said F.I.R. is big zero and non-est document in the eyes of law and all the subsequent exercise would also render in nullity. The alleged investigation conducted by Shri Dharendra Kumar conclusively is an eye-wash and a sham exercise which creates no criminal liability upon the chargesheeted accused persons.

If at all, these above mentioned factual position are true on its face value, then certainly it is a matter of grave concern and an

eye-opener for the entire criminal dispensation judicial system and has to be tackled and dealt with by the concerned authorities without showing any mercy to the author of these mischief mongers including the concerned police personnel, who seems to be hands in glove with such unscrupulous and cheeky informant/litigants. In fact, such type of I.Os., namely, Dharendra Kumar, are black-sheep in the police department, who reduced the entire criminal prosecution into a mockery and a laughing stock. Proxy F.I.R. has been registered, thereafter a drama of so called investigation was staged by the concerned I.O., who after alleged conclusion of investigation submits the charge sheet u/s 420, 406, 506 I.P.C. in Case Crime No.431 of 2020 on 28.9.2020 against the applicant and other co-accused persons and the learned Magistrate by putting a seal over it on 19.11.2020 takes the cognizance of the offences, which is simply ridiculous. When the Court compares the entire exercise viz-a-viz, statement of the informant Praveen Tomar u/s 164 Cr.P.C. in which he denies every averments of the F.I.R. and exposes the accused Lokendra @ Kallu to its core, then the entire castle over the F.I.R. reduces to semblance. Learned Magistrate too has taken the cognizance of the offences, as mentioned above, putting the seal of cognizance over the charge sheet. Recently Hon'ble Apex Court in the case of ***Ravindranatha Bajpe v Mangalore Special Economic zone Ltd & Others in Criminal Appeal Nos.1047-1048/2021 decided on 27.9.2021, referring to yet another judgement of Pepsi Foods Limited v Special Judicial Magistrate, (1998) 5 SCC 749***, has held that :

*“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect*

*that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”*

In order to issue summons, learned Magistrate has to record his satisfaction about the *prima facie* case against the accused and the role played by them in their respective capacity, which is sine-qua-non for initiating criminal proceedings against them. The Court is afraid to record that the way and the manner in which the learned C.J.M. has taken cognizance of the offences without verifying the identity of its author. In the entirety, every responsible authority, be it the I.O. of the case or the Magistrate has miserably failed in performing his responsibility. Under the circumstances, the Court records its deep anguish and concern about the way and the manner, in which the alleged fraud has been committed upon the system and the process, whereby the persons of vested interest just for the sake of amusement and for their joyride used this solemn mechanism to level the score with their opponents.

**Thus, the I.G., Meerut Range along with the District & Sessions Judge, Baghpat is hereby directed to constitute a Special Investigation Team (SIT) and would personally supervise a threadbare investigation into the matter and lodge F.I.R. against all those persons, who are either overtly or covertly involved in the offence, including the police personnel**



**who were entrusted with the investigation and submitted report u/s 173(2) Cr.P.C., within no time after lodging of the F.I.R. It is expected from the I.G., Meerut Zone as well as learned District & Sessions Judge, Baghpat to lodge an F.I.R. against erring persons to book them and proceed with suitable criminal prosecution against them which should be exemplary in nature.**

Copy of this order be handed over to Shri M.C. Chaturvedi, learned A.A.G.; and learned Registrar General of this Court to transmit the copy of this order to the I.G., Meerut Zone as well as learned District & Sessions Judge, Baghpat for conducting the aforesaid preliminary inquiry, lodging of the F.I.R. within stipulated period of time as above and intimate the Court about the action taken by them.

List this matter once again for further arguments on 02.12.2021.

Shri Manish Mishra, Additional S.P. and Shri Salim Ahmad, I.O. and Kiran Pal Singh, I.O. of the case are present in the Court. Their presence is exempted till further orders of the Court.

**Order Date :- 4.10.2021**  
M. Kumar